

APPELLATE UPDATE

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ANNOUNCEMENTS

On May 11th, the Supreme Court announced the adoption of Rule 36 of the Rules of Criminal Procedure to govern criminal appeals from district court to circuit court. The effective date is June 1, 2006. A copy of the per curiam order was included in the weekly mailout.

On May 18th, the Supreme Court announced the adoption of Rules 6-9 and 6-10 of the Rules of the Supreme Court to govern appeals in dependency-neglect cases. The effective date is July 1, 2006. A copy of the per curiam order was included in the weekly mailout.

On May 25th, the supreme court adopted various changes to rules affecting civil practice. The proposals had previously been published for comment. A copy of the per curiam order was included in the weekly mailout.

CRIMINAL

Gonder v. State: [**warrantless home search; consent**] The State carried its burden to demonstrate that the appellant's consent to search his residence was freely and voluntarily given, and the trial court did not err in denying the appellant's motion to suppress. (Dennis, J.; CACR 05-262; 5-3-06; Robbins)

Croston v. State: [**jail attire during trial**] The State put forth evidence that the appellant waived his right not to be tried in jail garb, and the appellant failed to present any evidence or even make an argument that disputed the appellant's waiver. The trial court did not err in allowing the appellant to go to jury trial in jail attire. (Maggio, M.; CACR 05-881; 5-3-06; Roaf)

Weston v. State: The appellant was convicted of capital murder, terroristic act, and first degree battery, and was sentenced to life imprisonment without parole, life imprisonment, and 240 months imprisonment. [**sufficiency of the evidence**] There was ample evidence to support the

jury's finding of capital murder with premeditation and deliberation. [**Batson**] Although the State did use nine of its ten peremptory challenges on African-Americans, the trial court's refusal to find a *Batson* violation was not clearly against the preponderance of the evidence. [**mental retardation; mitigating factor**] There was no error in the circuit court's permitting the jury to determine whether mental retardation was a mitigating factor that would prevent the appellant from being sentenced to death. Because the court found the evidence of mental retardation to be inconsistent, it was a fact question for the jury to decide in the sentencing phase of the trial. (Glover, D.; SCCR 05-972; 5-4-06; Dickey)

Winkle v. State: [**double jeopardy; acquittal on federal charges**] The Double Jeopardy Clause did not bar the State from prosecuting the appellant for statutory rape after the appellant had been acquitted by a federal jury of transporting a female under the age of eighteen across state lines with the intent to engage in criminal sexual activity. (Hudson, J.; SCCR 05-862; 5-11-06; Glaze)

Basham v. State: [**A.R.E. Rule 404(b); prior bad acts**] The appellant was convicted of terroristic threatening, sexual assault, second degree battery, and rape. The trial court did not err in finding the testimony of a witness (a previous adult rape victim) independently relevant to the issue of lack of mistake as to consent. (Arnold, G.; CACR 04-963; 5-17-06; Baker)

Blevins v. State: [**search warrant; affidavit**] Because the affidavit for a search warrant included a positive canine sniff, at a minimum it established an objectively reasonable belief that there was probable cause to conduct a search of the appellant's storage unit. [**harmless error; judicial confession**] Even if the contraband should have been suppressed, the error was harmless in view of the fact that the appellant testified at her trial and admitted every element of the crime. The appellant's testimony amounted to no more than an unprovoked judicial confession admitting guilt, and it was not the fruit of the poisonous tree. (Clinger, D.; CACR 05-1053; 5-17-06; Robbins)

Johnson v. State: The appellant was convicted of capital murder and sentenced to death. [**Act 1780; DNA testing of hairs**] Although the Supreme Court's previous mandate in the case ordered retesting of evidence (hairs found at the crime scene), the circuit court complied with the letter and spirit of the mandate by referencing earlier retesting that had been performed on the hairs. No further retest of the hairs was necessary. (Capeheart, T.; SCCR 05-1180; 5-18-06; Gunter)

Williams v. State: NOTE: this is a substituted opinion for an opinion issued 3-15-06. [**sufficiency of the evidence; possession of firearm; joint occupancy**] The State failed to prove that the appellant possessed the gun (which was found in an apartment jointly occupied by the appellant and his girlfriend) because it failed to show that the appellant exercised care, control, and management over it, and the appellant's felon in possession of a firearm conviction was reversed and dismissed. [**marijuana possession; subsequent offense**] Where the appellant had previously been convicted of possession of cocaine, the appellant's first conviction for possession of marijuana was the second offense for violation of the subsection (A.C.A. 5-64-401C), and the appellant was properly charged and convicted of a class D felony. (Proctor, W.; CACR 05-1064; 5-24-06; Glover)

Barnett v. State: **[motion to vacate conviction; plea agreement; expungement]** The appellant moved to vacate his conviction (for first degree sexual abuse) when the State objected to the appellant's petition for expungement at the conclusion of the probationary period. The circuit court did not err in denying the appellant's motion to vacate his conviction where there was no evidence in the record that expungement was a term of the original plea agreement. (Anthony, C.; SCCR 05-1179; 5-25-06; Imber)

Terry v. State: **[sufficiency of the evidence]** There was substantial evidence to support the appellant's conviction and life sentence for raping his infant daughter. (Hanshaw, L.; SCCR 05-1308; 5-25-06; Dickey)

CIVIL

Office Machines v. Mitchell: **[tortious interference]** Defendant was engaged in a privileged competitive activity and there was no tortious interference. (Plegge, J.; CA 05-323; 5-3-06; Pittman)

Thornton v. Ark. Valley Electric Coop.: **[overhead wires]** Plaintiff failed to give the statutory notice to the utility of impending work near its line; therefore, the utility owed the plaintiff no duty. (Patterson, J.; CA 05-1234; 5-3-06; Vaught)

Givens v. Haybar: **[redemption for delinquent taxes]** Limitations periods for redemption do not apply to incapacitated persons. Here, the property owner was disabled when he died. The inheritors of the property were required to redeem the property within 2 years of the expiration of the decedent's disability (disability removed by death). The inheritors cannot tack their disability onto the decedent's for the purpose of extending the redemption period. (Sims, B.; CA 05-924; 5-3-06; Roaf)

Moses v. Hanna's Candle Co.: **[workers' comp]** Workers' Compensation Commission has exclusive, original jurisdiction to determine issue of whether products liability claim against defendant was barred by the Act and whether employer-employee relationship existed. (Gunn, M.; SC 05-1105; 5-4-06; Glaze)

Harris v. City of Fort Smith: **[FOIA/attorneys' fees]** Court was within its discretion to deny request for attorneys' fees to the prevailing party in the Freedom of Information Act litigation. City's position was substantially justified in resisting request. (Fitzhugh, M.; SC 05-965; 5-4-06; Gunter)

Ganey v. Kawasaki: **[personal jurisdiction]** Arkansas court lacked jurisdiction over the defendants. Defendant A's one transaction related to Arkansas, wholly unrelated to the instant litigation, could not be classified as continuous, systematic or substantial. Defendant B did not solicit business or perform services in this state. Plaintiff purchased an ATV in Louisiana and subsequently brought it into Arkansas where he had an accident. **[choice of law]** Louisiana law applies to the facts of this case even though the accident occurred in Arkansas. Louisiana's

contacts included: ATV was purchased from a Louisiana dealer; plaintiff was a resident of Louisiana; and all the allegations concerning the product occurred outside of Arkansas. (Looney, J.; SC 05-1117; 5-4-06; Corbin)

Wyatt v. Giles: **[arbitration]** Plaintiff's remedy was not exclusively arbitration. She alleged a tort claim and the arbitration agreement excluded tort claims. (Fox, T.; CA 05-1094; 5-10-06; Vaught)

McCarthy v. Pulaski Circuit Court, Sixth Division: **[workers' comp]** Writ of prohibition granted to bar suit against putative employer. The Commission must be given the first opportunity to make a determination as to whether the defendant is an employer under the act. (Moody, J.; SC05-1246; 5-11-06; Hannah)

Jordan v. Circuit Court of Lee County: **[dismissal]** Circuit court refused to dismiss complaint and supreme court heard case as a petition for writ of certiorari. Supreme Court granted writ because dismissal order should have been granted on plaintiff's third complaint, and case should not have been allowed to proceed for the following reasons: (1) after non-suit of first complaint, service of second complaint was not had within 120 days; (2) rescission of order dismissing second complaint was untimely under Rule 60 and invalid; and (3) dismissal of second complaint was an adjudication on the merits barring any subsequent complaints. (Simes, L.; SC 05-1031; 5-11-06; Corbin)

Lacy v. Flake and Kelley: **[landlord liability]** Landlord was not liable for injuries suffered by tenant as a result of a criminal assault. The landlord did not assume a duty to protect the tenant from such an attack. The plaintiff failed to show any duty owed to her on the part of the landlord. (Piazza, C.; SC 05-827; 5-18-06; Glaze)

Clement v. Halter: **[residency/elections]** Voter had standing to attack candidates qualifications for office; however, on the merits, the challenge was without merit as the candidate had never abandoned his Arkansas domicile. (McGowan, M.; SC 05-519; 5-18-06 ; Glaze)

Nelson v. Weiss: **[service]** Trial court erred in dismissing complaint for untimely service. Plaintiff sought an extension to obtain service prior to expiration of time and demonstrated good cause (summons and complaint were delivered to sheriff but sheriff had been unable to serve the complaint). (Webb, G.; SC 05-1079; 5-18-06; Hannah)

Hanks v. Sneed: **[immunity]** Unsuccessful EMS candidate sued Health Board over failure to certify him. The defendants were entitled to sovereign and statutory immunity. (Gray, A.; SC 05-1149; 5-18-06; Brown)

Price v. Rylwell: **[tax sale]** Sale was proper even though it did not contain the actual date that the sale occurred. The statute allowed private negotiated sales after the public sale date has passed. (Sims, B.; CA 05-908; 5-17-06; Bird)

Parker v. Johnson: **[homestead exemption]** Homestead right is not terminated by divorce, and the evidence did not establish an intent to abandon the homestead. (Guthrie, D.; CA 05-1350; 5-17-06; Pittman)

Myers v. McAdams: **[final order]** Complaint alleged claims for wrongful death and rights under the survival statute. Trial court only addressed the wrongful death claim; accordingly, there was not a final appealable order. (Mills, B.; SC 05-1309; 5-25-06; Imber)

City of Little Rock v. Hudson: **[civil service commission appeal]** Trial court's ruling overturning civil service commission's disciplinary action was proper. (Humphrey, M.; SC 04-1350; 5-25-06; Glaze)

Norman v. Randle: **[limitations/unlawful detainer]** Limitations period on unlawful detainer action did not begin to run until other party made a demand for the property regardless of how long the person was in possession of the property. (Pope, S.; CA 05-1326; 5-24-06; Crabtree)

Millwood v. Blackburn: **[contract]** Successor owner of country club breached membership agreements when it changed the right to bring guests. The successor owner assumed the contracts and could not modify the provision on guests because it was a core provision of the membership agreements. (Yeargan, C.; CA 05-1259; 5-24-06; Gladwin)

Lineberry v. Riley Farms: **[restrictive covenants]** Owner violated restrictive covenants over fence height and possession of a bobcat. Court properly instructed jury on issue of "wild animal." (Fitzhugh, M.; CA 05-399; 5-24-06; Vaught)

Burnett v. Burnett: **[malicious prosecution]** In post-divorce dispute, former husband had his ex-wife arrested for trespass on former marital residence, which the husband had right to possess. Divorce papers did not prevent wife from going onto property. Evidence supported finding that husband did not disclose all relevant information to the prosecutor and that there was a lack of probable cause to arrest wife for trespass. (Sims, B.; CA 05-957; 5-31-06; Robbins)

Jones v. Wood Family Partnership: **[access/public road]** Right-of-way was public and structure impeded its use and had to be removed. (Whiteaker, P.; CA 05-1202; 5-31-06; Crabtree)

DOMESTIC RELATIONS

Cynthia Taylor v. Regan L. Payne: **[child support arrearages–equitable estoppel]** The trial court did not err in finding that the appellant mother was estopped from collecting child support from appellee beginning with the date the child began living with his appellee father until he turned eighteen. The court did not err in applying the doctrine of equitable estoppel to the child support arrearages. (Whiteaker, P.; No. CA05-1043; 5-10-06; Glover)

Jennifer Conlee v. Lade Thomas Conlee, Jr. **[appeal–time for filing record]** The trial attorney for appellee in this divorce action filed a notice of appeal on March 18, 2005, appealing the divorce decree entered March 8, 2005. On March 25, 2005, another attorney was retained by the appellee to perform posttrial services; on that same day, she filed a notice of appeal and arranged with the court reporter for the record to be prepared. The appellee filed a motion for a declaratory judgment and a motion to extend the time for filing the transcript. The circuit court granted the extension of time and specifically found that the first attorney’s notice of appeal was unauthorized by the appellee and that it did not comply with Ark. Code Ann. 16-13-510, because the transcript was never ordered nor was payment arranged with the court reporter. When the record was tendered to the Supreme Court Clerk, it was refused for being filed late. The appellant then appealed the trial court’s order granting the appellee’s motion for declaratory judgment and motion for filing the transcript for appeal. The Supreme Court held that the trial court had no jurisdiction to consider the second notice of appeal and that Rule 5 of the Arkansas Rules of Appellate Procedure–Civil applies. The Court said that the ninety days contemplated by Rule 5 begins to run from the filing of the first notice of appeal, whether both parties file a notice of appeal or whether one party files more than one notice of appeal. If a party fails to file the record within the ninety-day period provided under Rule 5, the appeal is dismissed. When the trial court held a hearing on appellee’s motion, after the ninety-day period had expired, the court had no jurisdiction. The trial court was reversed and the appeal was dismissed. (Gray, A.; No. SC 05-991; 5-11-06; Gunter)

Ricky N. Wilson v. Teresa Wilson Beckett. **[UCCJEA/home state/inconvenient forum]** The parties were divorced in Arkansas in 1996 and the appellee was granted custody, subject to appellant’s visitation, and appellant was ordered to pay child support. Both parties subsequently moved to other states, appellant to Louisiana and appellee to Missouri. Appellant filed a motion for contempt for the appellee’s allegedly depriving him of visitation. Appellee’s counter-motion was that Missouri is the child’s home state under both Arkansas’s UCCJEA and Missouri’s UCCJA. She subsequently filed a motion to dismiss alleging that her current husband had adopted the child by Missouri decree. The Court of Appeals held that the trial court did not err in its findings that Missouri was the child’s home state and that Arkansas was an inconvenient forum to challenge the validity of the Missouri judgment. The trial court was affirmed. (Landers, M.; No. CA05-1267; 5-24-06; Baker)

Rex M. Pablo v. Katie Crowder. **[order of protection]** The trial court entered an order of protection restraining the appellant from having any contact with the appellee for two years. On appeal, the appellant argued, first, that the trial court erred in not allowing him to call witnesses in his behalf and, second, in finding sufficient evidence to enter an order of protection. In affirming, the Court of Appeals found that although the trial court erred in not allowing the appellant to call his witness, the appellant failed to make any proffer of what the witness’s testimony would have been. Since the Court could only speculate about the testimony and whether the appellant was prejudiced by the denial, the Court would not reverse absent a demonstration of prejudice. From the testimony presented by the appellee, the trial court could reasonably find that the appellant committed domestic abuse under the statute. Finally, the appellant challenged whether the relationship between the parties was sufficient under the statute. The Court said it had no

hesitation in the trial court's finding that the parties' "dating relationship" for a couple of months, which the appellee characterized as "serious," came within the definition of the applicable statute. (Mashburn, M.; No CA05-1417; 5-24-06; Robbins)

Phil White v. Alice Ann White: [child support] The Court of Appeals affirmed in part and reversed and remanded and dismissed in part on the direct appeal and the cross-appeal of this child support case. On direct appeal, the circuit court was reversed on its calculations involving a depreciation expense and a capital gain and was remanded on those issues for clarification and for proper calculation of the appellant's child support obligation. On cross-appeal, the trial court did not address an issue related to the appellant's credit to his child-support obligation based upon his purchasing an automobile for his daughter because the judgment was conditional—he was to receive a credit if he purchased a vehicle within ninety days of entry of the order. The Court affirmed the trial court's allowing the appellant to claim the tax deduction for the parties' daughter because, even if not raised in the pleadings, the issue was properly tried with appellee's implied consent because she was the first party to broach the subject. Next, the trial court did not err in refusing to award expenses for the child's horse-show activities, based upon the fact that the appellee had the burden to present evidence sufficient to warrant the deviation and based upon the substantial increase in child support. Finally, the trial court did not err in finding that appellant did not owe appellee any money based upon what he had been ordered to pay and what he actually paid under the decree. The parties' testimony was in conflict and the determination of the credibility of witnesses is within the province of the trial court. (Foltz, H.; No. CA05-1029; 5-24-06; Neal)

PROBATE

Jerald Medlock, Jr. v. Michelle Mitchell: [wills; trusts; undue influence; confidential relationship] The trial court found that a 2003 will and amendments to a trust proffered by appellant's decedent (the widow of appellee's decedent; she died during the pendency of the action below) were the product of undue influence, while a 1998 will proffered by appellee, personal representative of Richard Mitchell was his valid will. In affirming, the Court of Appeals found that the trial court did not err in finding that a confidential relationship existed between the husband and wife, appellant's and appellee's decedents, thus giving rise to a presumption of undue influence in the making of the will and the amendment to a trust. Secondly, the Court of Appeals found that the trial court did not err in finding that the appellant did not successfully rebut the presumption. The Court said that cases involving undue influence frequently involve the credibility of the witnesses and the weight to be accorded their testimony, and that the trial court did not clearly err in its findings. (Spears, J.; No. CA05-891; 5-3-06; Hart)

A.W. Phillipy v. Sandra L. O'Reilly: [guardianship action—standing to appeal] The appellant is the father of the ward of the appellee, and he appealed from the trial court's finding that his father is incapacitated so as to warrant the appointment of the appellee as the permanent guardian of his person and estate. The Court found that the appellant fit none of the circumstances to give him

standing to appeal: he did not initiate the action by filing a complaint or answering a complaint; he did not intervene or was not joined in the action; he was not seeking relief from a judgment because he was not served with process; and he did not have a pecuniary interest affected by the trial court's disposition of the matter. Because he failed to fit any of the categories, the appeal was dismissed for lack of standing. (McCormick, D.; No. CA05-1221; 5-24-06; Gladwin)

William R. Bullock, Sr., Administrator v. Mary G. Barnes: **[wills; administration of estate]** The appellee's petition to reopen the Estate was time-barred under Rule 60 or Ark. Cod Ann. 28-53-119(b) because the record revealed that appellee had ample notice of the estate administration so that she could have made her claims in the original administration. Also, there was no showing of fraud so as to effectuate the exception to the ninety-day rule found in Rule 60(c)(4). (Cole, J.; No SC 06-97; 5-25-06; Gunter)

JUVENILE

Clark v. Arkansas Dep't of Human Servs. **[D-N Adjudication- Failure to appoint counsel]** Reversed trial court for failure to appoint parent counsel for father prior to adjudication hearing because the children had been effectively taken away from the appellant although they remained at home with their mother. As part of the DHS safety plan the father's home did not involve the children and for purposes of the statute there is no difference between having children removed from parental custody and ordering that a parent move from a home so that the appellant can not exercise custody. (Williams Warren, J.; CA 04-967; 4-13-2005; Griffen)

Arkansas Dep't of Human Servs. v. Kirby **[Ex Parte Custody]** DHS took a 72 hour hold of two children and the next day the paternal grandmother got an ex parte custody order filed under an original divorce action. An ex parte order is not a final appealable order. The court also noted that the trial court has no jurisdiction to decide the issue of custody upon death of a party after a divorce decree. (Singleton, H.; CA 04-1172; 4-27-2005; Gladwin)

U.S. SUPREME COURT

Holmes v. South Carolina: **[admissibility of evidence of another's guilt]** At petitioner's South Carolina trial for murder and related crimes, the prosecution relied heavily on forensic evidence that strongly supported petitioner's guilt. Petitioner sought to undermine the State's forensic evidence by introducing expert testimony suggesting that the evidence had been contaminated and that the police had engaged in a plot to frame him. Petitioner also sought to introduce evidence that another man, Jimmy White, had been in the victim's neighborhood on the morning of the assault and that White had either acknowledged petitioner's innocence or admitted to committing the crimes himself. In White's pretrial testimony, he denied making the incriminating statements and provided an alibi for the time of the assault.

The trial court excluded petitioner's third-party guilt evidence on the basis that such evidence

admissible if it raises a reasonable inference as to the defendant's own innocence, but inadmissible if it merely casts a bare suspicion or raises a conjectural inference as to another's guilt. The state supreme court held that where there is strong forensic evidence of an appellant's guilt, proffered evidence about a third party's alleged guilt does not raise a reasonable inference as to the appellant's own innocence. Applying this standard, the court held that petitioner could not overcome the forensic evidence against him.

Held: A criminal defendant's federal constitutional rights are violated by an evidence rule under which the defendant may not introduce evidence of third-party guilt if the prosecution has introduced forensic evidence that, if believed, strongly supports a guilty verdict. (No. 04-1327; May 1, 2006)

Ark. Dept. Of Health and Human Services v. Ahlborn: **[medicaid]** In response to Federal Medicaid law, Arkansas passed laws under which, when a state Medicaid recipient obtains a tort settlement following payment of medical costs on her behalf, a lien is automatically imposed on the settlement in an amount equal to Medicaid's costs. When that amount exceeds the portion of the settlement representing medical costs, satisfaction of the State's lien requires payment out of proceeds meant to compensate the recipient for damages distinct from medical costs, such as pain and suffering, lost wages, and loss of future earnings.

Following respondent Ahlborn's car accident with allegedly negligent third parties, petitioner Arkansas Department of Health Services (ADHS) determined that Ahlborn was eligible for Medicaid and paid providers \$215,645.30 on her behalf. She filed a state-court suit against the alleged tortfeasors seeking damages for past medical costs and for other items including pain and suffering, loss of earnings and working time, and permanent impairment of her future earning ability. The case was settled out of court for \$550,000, which was not allocated between categories of damages. ADHS did not participate or ask to participate in the settlement negotiations, and did not seek to reopen the judgment after the case was dismissed, but did intervene in the suit and assert a lien against the settlement proceeds for the full amount it had paid for Ahlborn's care. She filed this action in Federal District Court seeking a declaration that the State's lien violated federal law insofar as its satisfaction would require depletion of compensation for her injuries other than past medical expenses. The parties stipulated that the settlement amounted to approximately one-sixth of the reasonable value of Ahlborn's claim and that, if her construction of federal law was correct, ADHS would be entitled to only the portion of the settlement (\$35,581.47) that constituted reimbursement for medical payments made. In granting ADHS summary judgment, the court held that under Arkansas law, which it concluded did not conflict with federal law, Ahlborn had assigned ADHS her right to recover the full amount of Medicaid's payments for her benefit. The Eighth Circuit reversed, holding that ADHS was entitled only to that portion of the settlement that represented payments for medical care.

Held: Federal Medicaid law does not authorize ADHS to assert a lien on Ahlborn's settlement in an amount exceeding \$35,581.47, and the federal anti-lien provision affirmatively prohibits it from doing so. Arkansas' third-party liability provisions are unenforceable insofar as they compel a different conclusion. (No. 04-1506; May 1, 2006)

Brigham City v. Stuart: **[search]** Responding to a 3 a.m. call about a loud party, police arrived at the house in question, heard shouting inside, proceeded down the driveway, and saw two juveniles drinking beer in the backyard. Entering the yard, they saw through a screen door and windows an altercation in the kitchen between four adults and a juvenile, who punched one of the adults, causing him to spit blood in a sink. An officer opened the screen door and announced the officers' presence. Unnoticed amid the tumult, the officer entered the kitchen and again cried out, whereupon the altercation gradually subsided. The officers arrested respondents and charged them with contributing to the delinquency of a minor and related offenses. The trial court granted their motion to suppress all evidence obtained after the officers entered the home on the ground that the warrantless entry violated the Fourth Amendment. Affirming, the State Supreme Court held that the injury caused by the juvenile's punch was insufficient to trigger the 'emergency aid doctrine' because it did not give rise to an objectively reasonable belief that an unconscious, semiconscious, or missing person feared injured or dead was in the home. Furthermore, the court suggested the doctrine was inapplicable because the officers had not sought to assist the injured adult but had acted exclusively in a law enforcement capacity. The court also held that the entry did not fall within the exigent circumstances exception to the warrant requirement.

Held: Police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury.

The officers' entry here was plainly reasonable under the circumstances. Given the tumult at the house when they arrived, it was obvious that knocking on the front door would have been futile. Moreover, in light of the fracas they observed in the kitchen, the officers had an objectively reasonable basis for believing both that the injured adult might need help and that the violence was just beginning. Nothing in the Fourth Amendment required them to wait until another blow rendered someone unconscious, semiconscious, or worse before entering. The manner of their entry was also reasonable, since nobody heard the first announcement of their presence, and it was only after the announcing officer stepped into the kitchen and announced himself again that the tumult subsided. That announcement was at least equivalent to a knock on the screen door and, under the circumstances, there was no violation of the Fourth Amendment's knock-and-announce rule. Furthermore, once the announcement was made, the officers were free to enter; it would serve no purpose to make them stand dumbly at the door awaiting a response while those within brawled on, oblivious to their presence. (No. 05-502; May 22, 2006)

Garcetti v. Ceballos: **[First Amendment]** Respondent Ceballos, a supervising deputy district attorney, claimed that his employer retaliated against him for a memo he wrote in which he questioned the lawfulness of an arrest warrant. He filed suit claiming that his First Amendment rights were violated. The Ninth Circuit ruled that the memo was protected speech.

Held: When public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline. (No. 04-473; 5-30-06)